IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 760 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EXECUTIVE ENINGEER - Applicant(s)

Versus

HARIBHAI POPATBHAI MAKWANA & 4 - Opponent(s)

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Appearance :
Mr. Archna Raval, AGP for Petitioner No(s).: 1.

MR MC BHATT for Respondent No(s).: 1.
MR DM BHATT for Respondent No(s).: 1.
RULE UNSERVED for Respondent No(s).: 2,4.
RULE SERVED for Respondent No(s).: 3.
MR VIBHUTI NANAVATI for Respondent No(s).: 5.
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CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 04/08/2005

ORAL JUDGMENT

1. By filing instant petition under Section 115 of the Code of Civil Procedure ('the Code' for short), the applicant, Executive Engineer, Ahmedabad (R&B) Division, Ahmedabad, seeks to challenge the order dated 5.4.2000 rendered in Civil Misc. Application No.1370 of 1998 by the learned Assistant Judge, Ahmedabad (Rural), Mirzapur by which the application filed by the applicant seeking condonation of delay of 285 days caused in filing the Misc. Civil Application for review of the judgment and award dated 12.6.1996 recorded in MACP No.885 of 1986 by the MACT (Main), Ahmedabad (Rural) came to be rejected.

2. Opponent No.1/original claimant has filed MACP No.885 of 1986 claiming compensation of Rs.2 lacs on account of the injuries sustained by him in a vehicular accident which had taken

place on 14.1.1985 at about 8 P.M. between Ahmedabad and Rajkot, near Vankarvas of village Bagodara.

3. The Tribunal, after considering the averments made in the claim petition and the reply filed by the contesting opponents in the claim petition, passed the award for Rs.61,600/- together with interest at the rate of 12% per annum from the date of filing of the petition till its realisation against opponent Nos.1 to 4 herein (except opponent No.5, United India Insurance Company Limited).

4. Opponent No.1/original claimant has thereafter filed execution petition to recover the amount of the award of Rs.61,600/- together with interest at the rte of 12% per annum passed in his favour. Thereupon the applicant has filed the application for

condonation of delay of 285 days caused in filing the Misc. Civil Application for review of the judgment and award dated 12.6.1996 recorded in MACP No.885 of 1986 by the MACT (Main), Ahmedabad (Rural).

5. The learned trial Judge after considering the application seeking condonation of delay came to the conclusion that no sound, cogent, reasonable and satisfactory grounds are mentioned and the application submitted by the applicant is with a view to delay the execution petition proceedings pending before the City Civil Court, Ahmedabad and, therefore, rejected the application which has given rise to the present petition.

6. This Court has considered the submissions advanced by Ms. Archna Raval, learned AGP for the applicant, Mr. Prajapati, learned advocate

for Mr.M.C. Bhatt, learned advocate for opponent No.1/original claimant and Mr. Vibhuti Nanavati, learned advocate for opponent No.5 – United India Insurance Company Limited.

7. The main contention of the applicant before the trial court as well as this Court is that the applicant has not been served with the process issued by the MACT and opponent No.1-claimant has obtained ex-parte decree by serving process to wrong party.

8. The sole question which calls for determination of this court in this petition is as to whether the applicant was served with the process issued by MACT before adjudicating MACP No.885 of 1986.

9. In this connection, it is required to be

noted that opponent No.1/original claimant has field affidavit in reply at page 50 and also produced relevant documents at pages 53 and 55 to 57 which clearly demonstrate that the applicant was served with the process on 26.12.1986 and the process has been received by his department on 26.12.1986 and same has been moved from table to table between 26.12.1986 to 16.1.1987 and ultimately they had returned the process with the marks of his office to the trial court (Page 53). Again on 7.1.1988 opponent No.1/original claimant has filed fresh application and fresh address of the applicant (Page 54, Ex.13). On 12.1.1988 the trial court has re-issued the process which has been observed to the office of applicant on 15.1.1988 (Page 55). Registered A.D. Slip with regard to service of process is at page 56 and the rubber seal on the process can be seen on page 57 (between 13.1.1988 to

16.1.1988). Thus it is clear that the applicant has awaken from slumber after a pretty long time at the time of execution of the award.

10. In aforesaid view of the matter, according to this Court, the learned Assistant Judge, Ahmedabad (Rural), Mirzapur has committed no illegality or infirmity much less jurisdictional error in passing the impugned order requiring interference of this Court in this petition in exercise of powers under Section 115 of the Code.

11. Seen in the above context, the petition lacks merit an deserves to be rejected.

12. For the foregoing reasons, the petition fails and accordingly it is rejected with no order as to costs. Rule is discharged. Interim

relief, if any, granted earlier shall stand vacated.

(A.M. Kapadia, J.)

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